

**ASSEMBLY BILL**

**No. 1105**

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**Introduced by Assembly Member Daly**

February 27, 2015

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An act to amend Section 66499.7 of the Government Code, relating to subdivided lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 1105, as introduced, Daly. Subdivided lands: release of performance security.

The Subdivision Map Act and local ordinances authorize or require, under specified circumstances, the furnishing of specified types of security with respect to the performance of various acts or agreements subject to the act. Existing law, until January 1, 2016, also sets forth the specific procedures imposed on a local agency for the complete or partial release of a performance security furnished by a subdivider.

This bill would delete the repeal of the provisions relating to the procedures for releasing a performance security, thereby extending the operation of these provisions indefinitely and imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 66499.7 of the Government Code is  
2 amended to read:

3     66499.7. The security furnished by the subdivider shall be  
4 released in whole or in part in the following manner:

5     (a) Security given for faithful performance of any act or  
6 agreement shall be released upon the performance of the act or  
7 final completion and acceptance of the required work. The  
8 legislative body may provide for the partial release of the security  
9 upon the partial performance of the act or the acceptance of the  
10 work as it progresses, consistent with the provisions of this section.  
11 The security may be a surety bond, a cash deposit, a letter of credit,  
12 escrow account, or other form of performance guarantee required  
13 as security by the legislative body that meets the requirements as  
14 acceptable security pursuant to law. If the security furnished by  
15 the subdivider is a documentary evidence of security such as a  
16 surety bond or a letter of credit, the legislative body shall release  
17 the documentary evidence and return the original to the issuer upon  
18 performance of the act or final completion and acceptance of the  
19 required work. In the event that the legislative body is unable to  
20 return the original documentary evidence to the issuer, the security  
21 shall be released by written notice sent by certified mail to the  
22 subdivider and issuer of the documentary evidence within 30 days  
23 of the acceptance of the work. The written notice shall contain a  
24 statement that the work for which the security was furnished has  
25 been performed or completed and accepted by the legislative body,  
26 a description of the project subject to the documentary evidence  
27 and the notarized signature of the authorized representative of the  
28 legislative body.

29     (b) At the time that the subdivider believes that the obligation  
30 to perform the work for which security was required is complete,  
31 the subdivider may notify the local agency in writing of the  
32 completed work, including a list of work completed. Upon receipt  
33 of the written notice, the local agency shall have 45 days to review  
34 and comment or approve the completion of the required work. If  
35 the local agency does not agree that all work has been completed  
36 in accordance with the plans and specifications for the  
37 improvements, it shall supply a list of all remaining work to be  
38 completed.

1 (c) Within 45 days of receipt of the list of remaining work from  
2 the local agency, the subdivider may then provide cost estimates  
3 for all remaining work for review and approval by the local agency.  
4 Upon receipt of the cost estimates, the local agency shall then have  
5 45 days to review, comment, and approve, modify, or disapprove  
6 those cost estimates. No local agency shall be required to engage  
7 in this process of partial release more than once between the start  
8 of work and completion and acceptance of all work; however,  
9 nothing in this section prohibits a local agency from allowing for  
10 a partial release as it otherwise deems appropriate.

11 (d) If the local agency approves the cost estimate, the local  
12 agency shall release all performance security except for security  
13 in an amount up to 200 percent of the cost estimate of the  
14 remaining work. The process allowing for a partial release of  
15 performance security shall occur when the cost estimate of the  
16 remaining work does not exceed 20 percent of the total original  
17 performance security unless the local agency allows for a release  
18 at an earlier time. Substitute bonds or other security may be used  
19 as a replacement for the performance security, subject to the  
20 approval of the local agency. If substitute bonds or other security  
21 is used as a replacement for the performance security released, the  
22 release shall not be effective unless and until the local agency  
23 receives and approves that form of replacement security. A  
24 reduction in the performance security, authorized under this section,  
25 is not, and shall not be deemed to be, an acceptance by the local  
26 agency of the completed improvements, and the risk of loss or  
27 damage to the improvements and the obligation to maintain the  
28 improvements shall remain the sole responsibility of the subdivider  
29 until all required public improvements have been accepted by the  
30 local agency and all other required improvements have been fully  
31 completed in accordance with the plans and specifications for the  
32 improvements.

33 (e) The subdivider shall complete the works of improvement  
34 until all remaining items are accepted by the local agency.

35 (f) Upon the completion of the improvements, the subdivider,  
36 or his or her assigns, shall be notified in writing by the local agency  
37 within 45 days.

38 (g) Within 45 days of the issuance of the notification by the  
39 local agency, the release of any remaining performance security  
40 shall be placed upon the agenda of the legislative body of the local

1 agency for approval of the release of any remaining performance  
2 security. If the local agency delegates authority for the release of  
3 performance security to a public official or other employee, any  
4 remaining performance security shall be released within 60 days  
5 of the issuance of the written statement of completion.

6 (h) Security securing the payment to the contractor, his or her  
7 subcontractors and to persons furnishing labor, materials or  
8 equipment shall, after passage of the time within which claims of  
9 lien are required to be recorded pursuant to Article 2 (commencing  
10 with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4  
11 of the Civil Code and after acceptance of the work, be reduced to  
12 an amount equal to the total claimed by all claimants for whom  
13 claims of lien have been recorded and notice thereof given in  
14 writing to the legislative body, and if no claims have been recorded,  
15 the security shall be released in full.

16 (i) The release shall not apply to any required guarantee and  
17 warranty period required by Section 66499.9 for the guarantee or  
18 warranty nor to the amount of the security deemed necessary by  
19 the local agency for the guarantee and warranty period nor to costs  
20 and reasonable expenses and fees, including reasonable attorney's  
21 fees.

22 (j) The legislative body may authorize any of its public officers  
23 or employees to authorize release or reduction of the security in  
24 accordance with the conditions hereinabove set forth and in  
25 accordance with any rules that it may prescribe.

26 ~~(k) This section shall remain in effect only until January 1, 2016,~~  
27 ~~and as of that date is repealed, unless a later enacted statute, that~~  
28 ~~is enacted before January 1, 2016, deletes or extends that date.~~

29 SEC. 2. If the Commission on State Mandates determines that  
30 this act contains costs mandated by the state, reimbursement to  
31 local agencies and school districts for those costs shall be made  
32 pursuant to Part 7 (commencing with Section 17500) of Division  
33 4 of Title 2 of the Government Code.